

The question therefore is whether there are any circumstances in the present case which require or which compel the board to make standing orders. Having considered the facts of the case and the arguments of counsel for the defendant, I can find no circumstances which create a duty in the board to make standing orders. No doubt if the board does make standing orders, these must be approved by the Minister, but in my opinion, there is nothing in this case which compels the board to make standing orders.

In the absence of standing orders, other sections in the Ordinance enable the board to function. One of them is section 12, which reads as follows:—

"Subject as hereinafter provided, it shall be the function and duty of the board —

- (a) to prepare and execute the proposals, plans and projects for —
 - (i) the erection, conversion, improvement and extension of any building for sale, lease, rental or other purpose;
 - (ii) the clearance and redevelopment of slum and urban areas;
 - (iii) the development or redevelopment of areas designated by the Minister;
 - (iv) the development of rural or agricultural areas for the resettlement of persons displaced by operations of the board or other resettlement projects approved by the Minister;
- (b) to manage all lands, houses and buildings or other property vested in or belonging to the board;
- (c) to carry out all investigations and the surveys necessary for the performance of the functions and duties of the board;
- (d) to provide loans with the approval of the Minister, to enable persons to purchase any developed land or part thereof upon a mortgage of such developed land or part thereof upon a mortgage of such developed land or part thereof at such interest as may be prescribed;
- (e) to do all such other matters and things as are necessary for the exercise or performance of all or any of the functions and duties of the board."

It is to be observed that in section 12 the Minister's decision or approval is only required in three instances. The first appears in section 12(a) (iii) — the development or redevelopment of areas designated by the Minister. The second is to be found in section 12(a) (iv) — the development of rural or agricultural areas for the resettlement of persons displaced by operations of the board or other resettlement projects approved by the Minister and the third appears in section 12(d) — the board can provide loans with the approval of the Minister.

It is clear that the board can perform many of its duties and functions without seeking the approval of the Minister. There are many spheres in which the board can act without the approval of the Minister. In the present case the board had the right to pass a resolution that Mr. Chee Tiang Chin should be authorised to

sign the summons to be issued in the civil district court. It is not disputed that such a resolution was passed on the 13th July 1962.

In my judgment the proceedings in the civil district court were not a nullity because they were properly commenced by summons signed by Mr. Chee Tiang Chin with the authority of the board. The authority of the board was lawfully exercised because there were no standing orders, and it had acted under section 12(e) of the Housing and Development Board Ordinance, 1959.

The appeal is therefore dismissed with costs and the deposit of \$150 will be paid out to the respondent or its solicitors.

Appeal dismissed.

Solicitors: *R. C. H. Lim & Co.; C. J. Koh & Co.*

**RE LIM YEW TEOK, DECD.;
BRITISH AND MALAYAN TRUSTEES LTD. v.
CHNG KIAT LENG & ORS.**

[O.C.J. (Ambrose J.) June 11, 1966]

[Singapore — Originating Summons No. 112 of 1965]

Wills — Construction — Direction to pay income to residuary legatees and on death of residuary legatee to next of kin of such legatee and on death of such next of kin to the next of kin of such next of kin — Whether words can be supplied to effectuate intention of testator — Statutes of Distributions.

The testator directed by his will that the balance of income of his residuary estate be divided and paid to twelve named residuary legatees as stated by him. He also directed that on the death of a residuary legatee his or her shares of income should be paid to his or her next of kin in accordance with the Statutes of Distribution. He further directed that on the death of such next of kin his or her shares of income should be paid to the next of kin of such next of kin in accordance with the Statutes of Distribution. He went on to provide that only in the event of the complete failure of the stirps of any one or more of his residuary legatees should the shares of such original residuary legatee or legatees fall into residue.

Held: upon the true construction of the will on the death of the next of kin of the next of kin of a residuary legatee who has enjoyed shares of income under the will, the shares of income enjoyed by him pass to such of his next of kin as belong to the stirps of the original residuary legatee.

Cases referred to:—

- (1) *British Malaya Trustee and Executor Co. Ltd. v. Chan Mek Tuan* [1937] M.L.J. 233.
- (2) *British Malaya Trustee and Executor Co. Ltd. v. Chng Phee Lam* [1948] M.L.J. 188.
- (3) *Re Whitrick, Sutcliffe v. Sutcliffe* [1957] 2 All E.R. 467.

ORIGINATING SUMMONS.

M. Karthigesu for the plaintiffs.

C. L. Duff for the first and second defendants.

Chua Sian Chin for the third, fourth, fifth and sixth defendants.

Cur. Adv. Vult.

Ambrose J.: This is an application by trustees of the will and estate of Lim Yew Teok, deceased, for the determination of a question arising in the administration of the estate. The will was made on the 22nd August, 1925. The testator died on the 6th October, 1925. The applicants were appointed trustees by an order of court on the 15th January, 1937.

Clause 6 of the will contains six provisions. I will number them for convenience of reference. First, the testator leaves the residue of his property to his trustees upon trust for sale, conversion, payment of debts, funeral and testamentary expenses, and investment, and to hold the residuary estate until the date of distribution. Secondly, the testator directs the trustees to pay out of the income \$800 a month for the maintenance of the family house and a further sum for necessary repairs or renewals, and to divide the balance of the income into ninety-five equal shares and to pay the shares to the residuary legatees.

Thirdly, the testator makes this provision:—

“or in the event of the death of any one or more of such legatees to the next of kin of such legatee or legatees so dead in accordance with the Statutes of Distribution.”

Fourthly, the testator goes on to make this provision:—

“and in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the Statutes of Distribution.”

Fifthly, there follows this provision:—

“and only in the event of the complete failure of the strips of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue.”

Lastly, the testator names as residuary legatees his wife, four sons, a daughter, a grandson and five nephews, and states the shares of income to which they are respectively entitled.

The date of distribution is declared by clause 2 of the will to be at the expiration of 21 years from the death of the last surviving child of the testator. His last surviving child is Lim Boon Pin, who is still alive.

The testator's daughter, Lim Chye Inn, was one of the residuary legatees and she was entitled to twenty out of the ninety-five shares of the balance of income. She died on the 22nd August, 1927. In *British Malaya Trustee and Executor Co. Ltd. v. Chan Mek Tuan*,⁽¹⁾ it was held by Terrell Ag.C.J. that the twenty shares of income enjoyed by Lim Chye Inn passed upon her death under the third provision of clause 6 of the will to her four children to the exclusion

of her husband. Her four children were Lim Ah Kow, Chng Ah Dek, Chng Kiat Leng and Chng Kim Soh. Her husband was Chng Phee Lam.

Lim Chye Inn's daughter, Chng Kim Soh, died on the 18th October, 1941, married but without issue. In *British Malaya Trustee and Executor Co. Ltd. v. Chng Phee Lam*,⁽²⁾ it was held by Brown J. that the five shares of income which passed from Lim Chye Inn to Chng Kim Soh passed upon the death of Chng Kim Soh under the fourth provision of clause 6 of the will to her father, Chng Phee Lam, to the exclusion of her three brothers, namely, Lim Ah Kow, Chng Ah Dek and Chng Kiat Leng.

Chng Ah Dek died on the 3rd January, 1955, not having married. The trustees following the judgment of Brown J. acted on the view that the five shares of income which passed from Lim Chye Inn to him passed upon his death to his father, Chng Phee Lam, to the exclusion of his brother, Chng Kiat Leng. His brother, Lim Ah Kow died on the 9th September, 1953.

Chng Phee Lam after the death of his wife, Lim Chye Inn, married Ong Wei Kim. He died on the 5th January, 1957, leaving him surviving Chng Kiat Leng and Ong Wei Kim and four children by Ong Wei Kim. The four children are Chng Heng Tat, Chng Heng Choo, Chng Heng Tee and Chng Heng Liew. They are the third, fourth, fifth and sixth defendants respectively.

The first defendant is Chng Kiat Leng, the son of Chng Phee Lam by Lim Chye Inn. The second defendant is Lim Chui Ngor, the daughter of the first defendant's brother Lim Ah Kow.

The question which I have to decide is whether upon the true construction of the will the shares of income of Chng Kim Soh and of Chng Ah Dek which passed upon their respective deaths to Chng Phee Lam passed upon the death of Chng Phee Lam:—

- (a) to the first and second defendants equally to the exclusion of the other defendants or
- (b) to all six defendants equally or
- (c) fell into residue or otherwise.

To ascertain the testator's intention it is necessary to consider clause 8 of the will. This clause reads as follows:—

“I direct that my trustees shall stand possessed of the residuary trust funds at the date of distribution in trust

for such of my residuary legatees as shall be living at the date of distribution

and for the next of kin of such of my residuary legatees and their descendants per stirpes as shall have died prior to the date of distribution

in the shares or proportions which the residuary legatees or their respective next of kin were under the provisions in that behalf hereinbefore contained entitled to the income of my residuary trust funds immediately before such date."

In my judgment, clause 8 makes it clear that the testator's intention is that the persons enjoying the income under clause 6 immediately before the date of distribution are the persons entitled to the *corpus* under clause 8 and in the same proportions as they were entitled to the income immediately before the date of distribution. This is the view taken by Terrell Ag.C.J. in the 1937 case cited above, where it was held that in clauses 6 and 8 the testator clearly contemplates successive interests in the income. In the 1948 case cited above, Brown J. expressed agreement with the view taken by Terrell Ag.C.J.

Here I must refer to the fifth provision of clause 6:—

"and only in the event of the complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue."

This provision makes it clear that only in the event of the complete failure of the stirps of Lim Chye Inn, one of the original residuary legatees, shall the five shares of income of Lim Chye Inn which passed upon her death to each of her children Chng Kim Soh and Chng Ah Dek and which subsequently passed upon their respective deaths to Chng Phee Lam fall into residue upon the death of Chng Phee Lam. When Chng Phee Lam died on the 5th January, 1957, Lim Chye Inn's stirps had not failed, as her son Chng Kiat Leng, and her granddaughter Lim Chui Ngor (daughter of her son Lim Ah Kow, deceased) were alive: in fact, they are both still alive. In my judgment, the ten shares of income in question have, therefore, not fallen into residue.

Counsel for the last four defendants contends that the fifth provision of clause 6 of the will implies that the shares of income enjoyed by the next of kin of the next of kin of a residuary legatee under the fourth provision of clause 6 pass upon his death to his next of kin. Here I must refer to a principle of construction which is set out in *Jarman on Wills* (8th edition), Vol. I, page 592, and reads as follows:—

"Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention as collected from the context."

This passage was approved by the Court of Appeal in England in *Re Whitrick, Sutcliffe v. Sutcliffe*.⁽³⁾ In the present case I think it is clear that the testator has not completely expressed his meaning by the words which he has used in clause 6. Counsel for the last four defendants

A urges me to take the view that the provision which the testator intended but omitted to make immediately after the fourth provision was this:—

B "and in the event of the death of any one or more of such next of kin of such next of kin as aforesaid then to the next of kin of such next of kin of such next of kin in accordance with the statutes of distribution."

C Counsel for the first two defendants concedes that the words "and so on" should be read into the will immediately after the fourth provision of clause 6, and that this would mean reading into the will the provision suggested by counsel for the last four defendants. But he contends that the intention of the testator must be collected from a consideration of the whole will; and that the meaning of the will and of every part of it is determined according to that intention. In support of his contention he cites the following passage from *Halsbury's Laws of England*, 3rd edition, Vol. 39, page 973, paragraph 1474:—

E "The only principle of construction which is applicable without qualification to all wills, and overrides every other rule of construction is that the intention of the testator is collected from a consideration of the whole will, taken in connexion with any evidence properly admissible, and the meaning of the will and of every part of it is determined according to that intention."

It is said by counsel that according to clause 8 the persons entitled to the *corpus* are:—

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- (1) the residuary legatees living at the date of distribution,
 - (2) the next of kin of such residuary legatees as shall have died prior to that date, and
 - (3) the next of kin of such of the descendants *per stirpes* of deceased residuary legatees as shall have died prior to that date.

G It is said further that the persons enjoying the income under clause 6 immediately before that date are the persons entitled to the *corpus* under clause 8 and in the same proportions as they were entitled to the income immediately before that date. Counsel for the first two defendants accordingly submits that the intention of the testator collected from a consideration of clauses 6 and 8 is that the shares of income enjoyed by the next of kin of the next of kin of a residuary legatee under the fourth provision of clause 6 pass upon his death to such of his next of kin as come within the three classes of persons set out in clause 8.

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I Counsel for the last four defendants does not quarrel with this submission but contends that the last four defendants are next of kin of Chng Kim Soh and Chng Ah Dek, descendants of Lim Chye Inn, a residuary legatee, and are therefore within the third class of persons mentioned in clause 8, namely, the next of kin of such of the defendants *per stirpes* of deceased

residuary legatees as shall have died prior to the date of distribution.

It seems to me that the expression "next of kin" as used by the testator in clause 8 means the next of kin of the person in question at that person's death. My reason is this. The persons entitled to the *corpus* under clause 8 must first qualify for shares of income under clause 6. To qualify for shares of income under the third provision of clause 6 they would have to be the next of kin of the residuary legatee in question at the residuary legatee's death. To qualify for shares of income under the fourth provision of clause 6 they would similarly have to be the next of kin of the next of kin of the residuary legatee at the death of the next of kin of the residuary legatee. In my view, the next of kin of Chng Kim Soh according to the Statutes of Distribution at Chng Kim Soh's death was her father, Chng Phee Lam, and not the last four defendants, who are her half-brother and half-sisters. In the same way, the next of kin of Chng Ah Dek according to the Statutes of Distribution at Chng Ah Dek's death was his father, Chng Phee Lam, and not the last four defendants. In my opinion, it was Chng Phee Lim who came within the third class of persons mentioned in clause 8 at Chng Kim Soh's death and again at Chng Ah Dek's death. According to the Statutes of Distribution he was the next of kin of Chng Kim Soh and Chng Ah Dek, deceased descendants of Lim Chye Inn, a deceased residuary legatee. In my judgment, the last four defendants do not come within the third class of persons mentioned in clause 8. They are only the next of kin of Chng Phee Lam, the next of kin of Chng Kim Soh and Chng Ah Dek, deceased descendants of Lim Chye Inn, a deceased residuary legatee.

In my judgment, the first defendant also does not come within the third class of persons mentioned in clause 8. He is one of the next of kin of Chng Phee Lam, the next of kin of Chng Kim Soh and Chng Ah Dek, deceased descendants of Lim Chye Inn, a deceased residuary legatee. The first defendant was one of the next of kin of Lim Chye Inn, a residuary legatee, at Lim Chye Inn's death. As such he comes within the second class of persons mentioned in clause 8. But this does not help him in any way as regards his claim to the shares of income enjoyed by Chng Phee Lam. If the date of distribution had arrived, the first defendant could not claim under clause 8 the share of *corpus* corresponding to the shares of income enjoyed by Chng Phee Lam, merely on the ground that he was one of the next of kin of Lim Chye Inn, a deceased residuary legatee.

It is argued for the second defendant that because she is the next of kin of Lim Ah Kow, a deceased descendant of Lim Chye Inn, a deceased residuary legatee, the second defendant

A comes within the third class of persons mentioned in clause 8. In my opinion, this fact would only enable her, if the date of distribution had arrived, to claim under clause 8 the shares of *corpus* corresponding to the shares of income which passed to Lim Ah Kow under the third provision of clause 6 and which subsequently passed to her under the fourth provision of clause 6 upon the death of Lim Ah Kow. In my opinion that fact would not help her in any way as regards her claim to the shares of income enjoyed by Chng Phee Lam.

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C I think I have to turn to clause 6 to answer the question which I have to decide. It seems clear to me from the fifth provision of clause 6 that, upon the death of the next of kin of the next of kin of a residuary legatee who has enjoyed shares of income under the fourth provision of clause 6, the intention of the testator is that the shares of income enjoyed by him pass to such of his next of kin as belong to the stirps of the original residuary legatee. In the 1948 case cited above, it was held by Brown J. that the fifth provision of clause 6 would not justify qualifying the express words "next of kin of such next of kin in accordance with the Statutes of Distribution" which appear in the fourth provision of clause 6 by restricting the next of kin indicated by those express words to the next of kin who belong to the stirps of the residuary legatee in question. In the present case I am not qualifying any express words. I am only concerned with what the fifth provision of clause 6 implies. In my judgment it implies that, upon the death of the next of kin of the next of kin of a residuary legatee who has enjoyed shares of income under the fourth provision of clause 6, the shares of income enjoyed by him pass to such of his next of kin as belong to the stirps of the original residuary legatee.

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G All six defendants are the next of kin of Chng Phee Lam. The first two defendants belong to the stirps of Lim Chye Inn, the original residuary legatee in question, but the last four defendants do not. The answer to the question which I have to decide is, therefore, that upon the true construction of the will the shares of income of Chng Kim Soh and of Chng Ah Dek which passed upon their respective deaths to Chng Phee Lam passed upon the death of Chng Phee Lam to the first and second defendants equally to the exclusion of the other defendants.

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I I order that the costs of all parties to this originating summons be taxed as between solicitor and client and paid out of the estate of Lim Yew Teok, deceased.

Order accordingly.

Solicitors: Allen & Gledhill; Donaldson & Burkinshaw; Lee & Lee.